

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MYRON D. SEGGERMAN,)	
)	No. CV-10-0350-CI
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	AND GRANTING DEFENDANT'S
MICHAEL J. ASTRUE, Commissioner)	MOTION FOR SUMMARY JUDGMENT
of Social Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-Motions for Summary Judgment. (ECF No. 23, 25.) Attorney Christopher H. Dellert represents Myron Seggerman (Plaintiff); Special Assistant United States Attorney David R. Johnson represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. (ECF No. 6.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

JURISDICTION

Plaintiff protectively filed for disability benefits (DIB) and Supplemental Security Income (SSI) on October 2, 2007. (Tr. 120.) He alleged disability due to degenerative disc disease that caused pain in his lower back, shoulder, and neck, and numbness in his feet, arm and legs "especially when driving." (Tr. 125.) His alleged onset date is September 24, 2007. (Tr. 120.) Plaintiff's claim was denied initially and on reconsideration, after which he

1 requested a hearing before an administrative law judge (ALJ). A
2 video hearing was held in Wenatchee, Washington, on October 19,
3 2009, at which Plaintiff, who was represented by counsel, and
4 vocational expert Daniel R. McKinney, Sr., (VE) testified. (Tr. 8.)
5 ALJ Barbara Artuso from Matairie, Louisiana, presided. (Tr. 24.) She
6 denied benefits on January 28, 2010, and the Appeals Council denied
7 review. (Tr. 8-15, 1-3.) The instant matter is before this court
8 pursuant to 42 U.S.C. § 405(g).

9 **STATEMENT OF THE CASE**

10 The facts of the case are set forth in detail in the transcript
11 of proceedings and are briefly summarized here. At the time of the
12 hearing, Plaintiff was 48 years old, single, and living by himself
13 in a one-story house. (Tr. 29, 31.) He testified he attended school
14 up to the 11th grade, obtained a high school equivalency degree, and
15 attended a year of college for heating and air conditioning
16 training. (Tr. 41.) Plaintiff has past work experience as a
17 heating and air conditioning installer and technician, a pipefitter,
18 a plumbing installer, and as an adult care-giver. (Tr. 42, 126.)
19 His longest employment was as a care-giver. (Tr. 126.) He testified
20 had not worked since that job ended in September 2007, when the
21 patient died. (Tr. 30, 126.)

22 Plaintiff testified he could no longer work due to numbness in
23 his arms, legs, hands, feet and spasms in his back. He stated he
24 could not sit, stand, or walk for longer than 25 minutes and was
25 limited to lifting no more than 10 pounds. (Tr. 35.) He also
26 testified his hands go numb all the time and his legs are numb. (Tr.
27 36-37.) He also stated he is taking pain medication every six hours
28

1 in the form of Vicodin. (Tr. 38.) Plaintiff explained he is not
2 considering back surgery because his treating physician did not
3 think it would fix his problem. (Tr. 40)

4 **ADMINISTRATIVE DECISION**

5 ALJ Artuso found Plaintiff's date of last insured for DIB
6 purposes was December 31, 2011. (Tr. 8.) At step one, she found
7 Plaintiff had not engaged in substantial gainful activity since the
8 alleged onset date. (Tr. 10.) At step two, she found Plaintiff had
9 severe impairments of "disorders of the spine, plantar fascitis
10 [sic], right elbow epicondylitis, and obesity." (*Id.*) At step
11 three, the ALJ determined Plaintiff's impairments, alone and in
12 combination, did not meet or medically equal one of the listed
13 impairments in 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4
14 (Listings). (Tr. 11.) In her step four findings, the ALJ found
15 Plaintiff's statements regarding pain and limitations were credible
16 "only to the extent they are consistent" with the RFC findings.
17 (Tr. 11-12.) She adopted the opinion of Plaintiff's treating
18 physician and found Plaintiff retained the RFC to perform sedentary
19 work with the following limitations: "he needs to be able to
20 alternate from sitting to standing for five minutes per hour, can
21 only occasionally push and pull and can handle and finger
22 frequently, but not constantly." (Tr. 11, 13.) Based on the RFC
23 and vocational expert testimony, ALJ Artuso found Plaintiff could
24 not perform his past relevant work. (Tr. 13.) Proceeding to step
25 five, she determined Plaintiff could perform other unskilled
26 sedentary work in the national economy; thus, Plaintiff was
27 determined "not disabled" as defined by the Social Security Act from
28

1 September 24, 2007, through the date of her decision. (Tr. 27.)

2 **STANDARD OF REVIEW**

3 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
4 court set out the standard of review:

5 A district court's order upholding the Commissioner's
6 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,
7 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
8 Commissioner may be reversed only if it is not supported
9 by substantial evidence or if it is based on legal error.
10 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
11 Substantial evidence is defined as being more than a mere
12 scintilla, but less than a preponderance. *Id.* at 1098.
13 Put another way, substantial evidence is such relevant
14 evidence as a reasonable mind might accept as adequate to
15 support a conclusion. *Richardson v. Perales*, 402 U.S.
16 389, 401 (1971). If the evidence is susceptible to more
17 than one rational interpretation, the court may not
18 substitute its judgment for that of the Commissioner.
19 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*
20 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

21 The ALJ is responsible for determining credibility,
22 resolving conflicts in medical testimony, and resolving
23 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
24 Cir. 1995). The ALJ's determinations of law are reviewed
25 *de novo*, although deference is owed to a reasonable
26 construction of the applicable statutes. *McNatt v. Apfel*,
27 201 F.3d 1084, 1087 (9th Cir. 2000).

28 It is the role of the trier of fact, not this court, to resolve
conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
supports more than one rational interpretation, the court may not
substitute its judgment for that of the Commissioner. *Tackett*, 180
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
Nevertheless, a decision supported by substantial evidence will
still be set aside if the proper legal standards were not applied in
weighing the evidence and making the decision. *Browner v. Secretary*
of Health and Human Services, 839 F.2d 432, 433 (9th Cir. 1988). If
there is substantial evidence to support the administrative

1 findings, or if there is conflicting evidence that will support a
2 finding of either disability or non-disability, the Commissioner's
3 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-
4 1230 (9th Cir. 1987).

5 SEQUENTIAL PROCESS

6 The Commissioner has established a five-step sequential
7 evaluation process for determining whether a person is disabled. 20
8 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.
9 137, 140-42 (1987). In steps one through four, the burden of proof
10 rests upon the claimant to establish a prima facie case of
11 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99.
12 This burden is met once a claimant establishes that a physical or
13 mental impairment prevents him from engaging in his previous
14 occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a
15 claimant cannot do his past relevant work, the ALJ proceeds to step
16 five, and the burden shifts to the Commissioner to show that (1) the
17 claimant can make an adjustment to other work; and (2) specific jobs
18 exist in the national economy which claimant can perform. *Batson v.*
19 *Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004).
20 If a claimant cannot make an adjustment to other work in the
21 national economy, a finding of "disabled" is made. 20 C.F.R. §§
22 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

23 ISSUES

24 The question is whether the ALJ's decision is supported by
25 substantial evidence and free of legal error. Plaintiff argues
26 remand is required to allow the ALJ to consider new evidence
27 submitted to district court on appeal. He also contends the ALJ
28

1 failed to give legally sufficient reasons for discounting his
2 credibility. (ECF No. 24.) Defendant responds the ALJ's credibility
3 determination is supported by clear and convincing reasons and
4 remand is not required because the new evidence is not material and
5 good cause does not exist for Plaintiff's failure to obtain the new
6 evidence earlier in these proceedings. (ECF No. 26.)

7 DISCUSSION

8 A. Credibility

9 Plaintiff argues the ALJ did not give the requisite "clear and
10 convincing" reasons for discrediting his testimony. (ECF No. 24 at
11 10-11.) When an ALJ finds a claimant's statements as to the
12 severity of impairments, pain and limitations are not credible, she
13 must make a credibility determination with findings sufficiently
14 specific to permit the court to conclude claimant's allegations were
15 not arbitrarily discredited. *Thomas v. Barnhart*, 278 F.3d 947, 958-
16 959 (9th Cir. 2002); *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th
17 Cir. 1991) (en banc). If there is no affirmative evidence of
18 malingering, the ALJ must provide "clear and convincing" reasons for
19 rejecting the claimant's allegations regarding the severity of
20 symptoms. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

21 The ALJ engages in a two-step analysis in deciding whether to
22 admit a claimant's subjective symptom testimony. *Smolen v. Chater*,
23 80 F.3d 1273, 1281 (9th Cir. 1996). Under the first step, the ALJ
24 must find the claimant has produced objective medical evidence of an
25 underlying impairment, and that the impairment, or combination of
26 impairments, "could reasonably be expected to produce pain or other
27 symptoms." *Cotton v. Bowen*, 799 F.2d 1403, 1405 (9th Cir. 1986).

1 Here, the ALJ found Plaintiff's impairments could reasonably be
2 expected to cause the alleged symptoms. Thus, the first prong of
3 the *Cotton* test was met. (Tr. 13.)

4 Under the second prong, the ALJ must evaluate the credibility
5 of the claimant. *Cotton*, supra. As noted by the Ninth Circuit, in
6 disability proceedings,

7 [An adjudicator] cannot be required to believe every
8 allegation of disabling pain, or else disability benefits
9 would be available for the asking, a result plainly
10 contrary to 42 U.S.C. § 423 (d)(5)(A). . . . This holds
11 true even where the claimant introduces medical evidence
showing that he has an ailment reasonably expected to
produce some pain; many medical conditions produce pain
not severe enough to preclude gainful employment.

12 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). In making a
13 credibility determination, the ALJ does not need to totally reject
14 or accept a claimant's statements. Rather, after considering all
15 the evidence in the record, the ALJ may find the claimant's
16 statements regarding limitations, symptoms, and pain are credible
17 "to a certain degree." SSR 96-7p.

18 The ALJ may consider at least the following factors: the
19 claimant's reputation for truthfulness; inconsistencies either in
20 her allegations of limitations or between his statements and
21 conduct; daily activities and work record; and testimony from
22 physicians and third parties concerning the nature, severity, and
23 effect of the alleged symptoms. *Light v. Social Sec. Admin.*, 119
24 F.3d 789, 792 (9th Cir. 1997); *Fair*, 885 F.2d 597, 604 n.5. The ALJ
25 may also consider an unexplained failure to follow treatment
26 recommendations and testimony by the claimant "that appears less
27 than candid." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.
28

1 2008). The amount of treatment sought is an indicator of intensity
2 and persistence of symptoms. 20 C.F.R. §§ 404.1529(c)(3),
3 416.929(c)(3). Although an adjudicator may not reject a claimant's
4 extreme symptom complaints solely on a lack of objective medical
5 evidence, medical evidence is a relevant factor to consider. *Burch*
6 *v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005); *Social Security*
7 *Ruling* (SSR) 96-7p. If the ALJ's credibility findings are supported
8 by substantial evidence and free of legal error, "the court may not
9 engage in second-guessing," and the Commissioner's determination
10 will not be disturbed. *Thomas*, 278 F.3d at 959; *Fair*, 885 F.2d at
11 604; see also *Morgan*, 169 F.3d 595, 599 (credibility findings "are
12 functions solely of the ALJ").

13 Here, the ALJ did not reject totally Plaintiff's subjective
14 complaints. Consistent with the governing legal standards, the ALJ
15 summarized Plaintiff's testimony and gave specific, permissible
16 reasons for discounting to a certain degree Plaintiff's allegations,
17 and found Plaintiff was restricted to jobs at the sedentary
18 exertional level. (Tr. 11-13.) As noted by Plaintiff, the ALJ
19 found objective medical evidence did not support the level of
20 impairment alleged, and no physician opined Plaintiff was incapable
21 of work. (ECF No. 24 at 10.) These are permissible reasons to
22 discount allegations of disabling pain. *Burch*, 400 F.3d at 681;
23 *Osenbrock v. Apfel*, 240 F.3d 1157, 1165, 1166 (9th cir. 2001)
24 (evidence that claimant's doctor released claimant to light work
25 supports rejection of severe symptom testimony).

26 *De novo* review shows these reasons are supported by the record.
27 Specifically, the ALJ found Plaintiff's treatment history and MRI
28 reports, showing mild degenerative disc disease, mild degenerative

1 joint disease, small disc herniation, and no confirmed nerve root
2 compression, did not support a finding of disabling pain. (Tr. 11.)
3 In addition to the lack of objective medical evidence to support a
4 finding of disabling pain, the ALJ properly identified other "clear
5 and convincing" reasons for his credibility findings. (Tr. 11-13.)
6 She referenced evidence of significant lapses of treatment (two
7 years in 2007 and one full year in 2008). (Tr. 12.) Evidence of a
8 sporadic treatment record undermines claims of disabling pain.
9 *Burch*, 400 F.3d at 681 (degree of treatment sought is "powerful
10 evidence" of degree of pain experienced).

11 The ALJ also considered Plaintiff's activities of daily living.
12 (Tr. 12, 13.) For example, Plaintiff reported moving a wood stove,
13 the ability to do housework, maintain a wood pellet stove, cook,
14 shop for groceries, go out to lunch, and visit friends. The ALJ
15 properly found these activities inconsistent with allegations of
16 disabling pain. (Tr. 11.) Because the ability to perform physical
17 activities required by these daily activities is transferrable to
18 work-related activities, the ALJ did not err in considering this
19 factor in her credibility determination. *Burch*, 400 F.3d at 681.

20 Significantly, the ALJ found that Plaintiff's treating
21 physician, Rick Welton, M.D., opined Plaintiff could perform
22 sedentary work. (Tr. 13, 242.) This is a "clear and convincing
23 reason" to discount Plaintiff's claim that he could not perform any
24 level of work. 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2)(more
25 weight given treating physician opinions due to longitudinal
26 perspective). Further, Plaintiff's contention that Dr. Welton
27 should have consulted the Medical-Vocational guidelines prior to
28

1 giving his medical opinion is without merit. (ECF No. 24 at 12.)
2 There is no legal requirement that a medical source consider Medical
3 Vocation Guidelines in rendering a medical opinion regarding
4 limitations caused by a patient's impairments. See 20 C.F.R. §§
5 404.1527(a)(2), 416.927(a)(2)(medical opinions reflect acceptable
6 medical source "judgments about the nature and severity of your
7 impairments . . . including what you can still do despite
8 impairment(s), and your physical and mental restrictions"). The ALJ
9 properly gave Dr. Welton's opinion great weight in the sequential
10 evaluation. (Tr. 13.)

11 Plaintiff also contends the ALJ erred in concluding Plaintiff's
12 refusal to have back surgery was a failure to follow treatment
13 recommendations. (ECF No. 24 at 11, *citing* Tr. 13.) Even if this
14 were the case, one erroneous reason for discounting a claimant's
15 testimony is not fatal where, as here, numerous specific,
16 permissible reasons are articulated and supported by substantial
17 evidence. *Carmickle*, 533 F.3d at 1164. However, on review, it
18 appears the ALJ noted Plaintiff was "determined a viable surgical
19 candidate but declined to undergo surgery." (Tr. 13.) This was in
20 the context of finding that, in November 2008, Dr. Welton opined
21 even if sciatica surgery would not improve Plaintiff's motivation to
22 work, Plaintiff retained the ability to perform sedentary work.
23 (Tr. 13, 243-44.) Further, the ALJ permissibly found that
24 Plaintiff's failure to follow through with other conservative
25 treatment (physical therapy) "raises questions regarding
26 [Plaintiff's] overall motivation for improvement." (Tr. 13.) The
27 record shows Plaintiff's providers recommended physical therapy

1 beginning in 2004. However, Plaintiff presents no evidence that he
2 attempted to resolve his problems with a consistent approach to the
3 recommended treatment. (Tr. 182, 185, 229, 236-37.) The ALJ
4 rationally interpreted the medical records to find Plaintiff's
5 failure to seek appropriate medical treatment for the alleged severe
6 impairments reflects adversely on his credibility. *Tommasetti*, 533
7 F.3d at 1039.

8 The ALJ articulated specific, "clear and convincing" reasons
9 that are supported by the record in determining Plaintiff's
10 allegations were not credible to the extent they were inconsistent
11 with his ability to perform sedentary work. Because the findings
12 reflect a rational interpretation of the record in its entirety, the
13 ALJ's credibility determination may not be disturbed. *Thomas*, 278
14 F.3d at 959.

15 **B. New Evidence Submitted to District Court**

16 On appeal to district court, Plaintiff submitted five pages of
17 medical evidence consisting of clinic notes and radiology results
18 dated between May 18, 2010, and July 28, 2010. (ECF No. 24, Exhibit
19 A.) This evidence was not reviewed by the ALJ or the Appeals
20 Council. Plaintiff argues that a remand is necessary to allow the
21 ALJ to consider the new evidence. (ECF No. 24 at 7-10.)

22 There are two types of new evidence: (1) evidence that was not
23 before the ALJ, but was submitted to and considered by the Appeals
24 Council; and (2) evidence that is not part of the administrative
25 record, but was provided for the first time to this court (sentence
26 six new evidence). The evidence at issue here is the second type.
27 To justify a remand for consideration of this evidence, Plaintiff
28

1 must show that the new evidence is "material" and that there is
 2 "good cause" for his failure to include the evidence include such
 3 evidence into the record during the administrative proceedings. 42
 4 U.S.C. § 405(g)(sentence six);¹ see also *Melkonyan v. Sullivan*, 501
 5 U.S. 89, 102 (1991); *Mayes v. Massanari*, 276 F.3d 453, 462 (2001);
 6 *Burton v. Heckler*, 724 F.2d 1415, 1417 (9th Cir. 1984).

7 **1. Materiality**

8 New evidence is material if it bears "directly and
 9 substantially on the matter in dispute" and there is a "reasonable
 10 possibility" that it would have changed the outcome of the
 11 administrative decision. *Sullivan v. Finkelstein*, 496 U.S. 617, 626
 12 (1990); *Mayes*, 276 F.3d at 462; *Booz v. Secretary of Health and*
 13 *Human Serv.*, 734 F.2d 1378, 1381 (9th Cir. 1984).

14 The new evidence submitted by Plaintiff consists of a May 18,
 15 2010, clinic note from Dr. Welton and a three sentence letter signed

17 ¹ Sentence six of 42 U.S.C. § 405(g) states:

18 The court may, on motion of the Commissioner of Social
 19 Security made for good cause shown before the Commissioner
 20 files the Commissioner's answer, remand the case to the
 21 Commissioner of Social Security for further action by the
 22 Commissioner of Social Security, and it may at any time
 23 order additional evidence to be taken before the
 24 Commissioner of Social Security, but only upon a showing
 25 that there is new evidence which is material and that
 26 there is good cause for the failure to incorporate such
 27 evidence into the record in a prior proceeding; and the
 28 Commissioner of Social Security shall, after the case is
 remanded, and after hearing such additional evidence if so
 ordered, modify or affirm the Commissioner's findings of
 fact or the Commissioner's decision, or both, and shall
 file with the court any such additional and modified
 findings of fact and decision, and, in any case in which
 the Commissioner has not made a decision fully favorable
 to the individual, a transcript of the additional record
 and testimony upon which the Commissioner's action in
 modifying or affirming was based.

1 by Shannon Grosdidier, M.D., stating Plaintiff's "neck MRI looks
2 good but you do have carpal tunnel syndrome." (ECF No. 24, Exhibit
3 A.) Attached to Dr. Grosdidier's letter is a two-page nerve
4 conduction study dated June 22, 2010. Plaintiff makes no argument
5 that Dr. Welton's post-hearing clinic note is material.

6 Dr. Grosdidier's diagnosis of carpal tunnel syndrome is based
7 on nerve conduction impressions of "moderate right median
8 mononeuropathy across the wrist" and "mild to moderate left median
9 mononeuropathy across the wrist." *Id.* Plaintiff argues the
10 diagnosis and study are material to a finding that he cannot perform
11 sedentary work.² However, this argument is unpersuasive because the
12 new evidence establishes a new diagnosis outside the claimed period
13 of disability. Further, even if this evidence established a new
14 diagnoses during the relevant period, there is no reasonable
15 possibility that the evidence will change the outcome of the
16 administrative proceedings. *Booz*, 734 F.2d at 1380.

17 Plaintiff avers he had "ongoing complaints" of hand numbness,
18 and the new evidence provides a diagnosis to explain the complaints.

19 _____
20 ²"Sedentary work" involves:

21 lifting no more than 10 pounds at a time and occasionally
22 lifting or carrying articles like docket files and small
23 tools. Although sitting is involved, a certain amount of
24 walking and standing is often necessary in carrying out
the job duties. Jobs are sedentary if walking and
standing are required occasionally and other sedentary
criteria are met.

25 SSR 83-10. Good use of the hands and fingers for repetitive hand-
26 finger actions is required generally in unskilled sedentary jobs.
27 *Id.*

1 (ECF No. 24). However, he fails to cite to any objective medical
2 evidence in which a medical provider observed significant hand
3 numbness, described objective medical evidence of decreased
4 mobility, or noted severe limitations in handling and/or fingering.
5 Although the record shows Plaintiff reported a history of hand
6 numbness to medical personnel during the claimed period of
7 disability (Tr. 195, 228), medical records show he was mainly
8 seeking treatment for back pain and numbness and tingling in his
9 lower extremities. In addition, Plaintiff testified his hands were
10 numb "all the time." (Tr. 36.) However, as discussed above, the
11 ALJ properly discounted Plaintiff's testimony, noting activities
12 performed by Plaintiff that are inconsistent with his allegation of
13 constant hand numbness.

14 For example, as found by the ALJ, the record shows Plaintiff
15 reported chopping wood in February 2007, when he was seeking
16 treatment at the Family Chiropractic Clinic for chronic neck pain.
17 At intake, he indicated he had "constant" hand numbness. (Tr. 193.)
18 However, there are no medical records indicating these complaints
19 were observed, verified, or treated. (See Tr. 189-201.) Rather,
20 the medical reports from the chiropractor indicate seven sessions of
21 treatment in 2007 for neck, low back, and foot pain. (Tr. 190.)
22 Clinic notes from the Omak Clinic indicate Plaintiff was seen for an
23 agency physical in April 2008. (Tr. 228.) During examination,
24 Plaintiff complained mainly of back pain, but also indicated he had
25 had hand and arm numbness since the 1980's. He reported he could
26 not lift due to neck, back and elbow pain, but did not reference
27 hand numbness as causing problems. The medical provider assessed

1 low back pain, cervical radiculopathy, and right elbow
2 epicondylitis. Contrary to Plaintiff's self-report, the examining
3 provider noted specifically that Plaintiff was able to perform
4 "rapid alternating hand movements." (Tr. 228.) Physical therapy
5 was recommended for back, neck, and right elbow problems. (Tr.
6 229.)

7 In May 2008, Plaintiff established care with Dr. Welton and
8 sought treatment for back pain and numbness of the right thigh.
9 (Tr. 249.) Plaintiff reported splitting and stacking wood over the
10 winter, but did not complain of hand weakness or numbness. Rather,
11 he requested medical marijuana for his back pain. (Tr. 249.) Clinic
12 notes through January 8, 2009, do not reflect problems with or
13 complaints of hand numbness. (Tr. 246-49.) Significantly, Dr.
14 Welton did not indicate limitations in handling in his physical
15 evaluations. (Tr. 242, 252, 255.)

16 Clinic notes from the North Valley Family Medicine indicate
17 Plaintiff was treated in October 2008, after injuring his back while
18 moving a wood stove. (Tr. 234.) He reported his back pain had been
19 somewhat resolved prior to that time, and made no mention of hand
20 numbness. The treating physician assessed left leg numbness and
21 possible nerve impingement of the lower back. (Tr. 234-36.)

22 Because there is no evidence of significant handling/fingering
23 limitations in a medical setting during the relevant period,
24 Plaintiff fails to show that Dr. Grosdidier's post-hearing diagnosis
25 bears "directly and substantially" on Plaintiff's limitations in
26 performing work related activities during the claimed period of
27 disability. See *Bruton v. Massanari*, 268 F.3d 824, 827 (9th Cir.

1 2001)(different medical evidence for a different time period did not
2 meet "materiality" prong under 42 U.S.C. § 405(g)); *Ward v.*
3 *Schweiker*, 686 F.2d 762, 765 (9th Cir. 1982)(post-hearing evidence of
4 deterioration of a condition does not satisfy materiality
5 requirement).

6 Plaintiff fails to indicate how the new evidence could
7 reasonably change the outcome of the administrative decision. As
8 discussed above, the ALJ properly discounted Plaintiff's symptom
9 allegations, and despite a lack of formal diagnosis, the ALJ
10 credited Plaintiff's subjective complaints of hand numbness to the
11 extent clinic notes discussed above supported limitations. She
12 reasonably limited handling and fingering activities to
13 "frequently," but not constantly. (Tr. 11.) Based on this non-
14 exertional limitation to sedentary work, the VE testified there were
15 other jobs that Plaintiff could perform. (Tr. 44-45.) Plaintiff
16 makes no showing that a formal diagnosis of carpal tunnel syndrome,
17 several months after the denial of benefits, could reasonably change
18 the limitations in handling and fingering identified by the ALJ.
19 Because Plaintiff has failed to show the new evidence is material,
20 a sentence six remand is not appropriate. If Plaintiff's hand
21 condition worsened significantly after he was found not disabled
22 during the relevant period, the later evidence could form the basis
23 for a new claim. *Ward*, 686 F.2d at 766.

24 **2. Good Cause**

25 To demonstrate good cause, a claimant must show the new
26 evidence was not available or in existence at the time of the
27 administrative proceedings. *Mayes*, 276 F.3d at 462-63. This
28

1 requirement is not met by seeking more favorable evidence after
2 benefits are denied. *Id.* (no good cause shown where claimant
3 complained of back problems during hearing but did not pursue a
4 diagnosis or treatment during claimed period of disability); *cf.*,
5 *Wainwright v. Secretary of Health and Human Services*, 939 F.2d 680,
6 (9th Cir. 1991)(new medical evidence available due to improvements in
7 technology meets good cause standard).

8 Here, the administrative record shows the ALJ denied benefits
9 on January 28, 2010; Plaintiff requested review by the Appeals
10 Council on March 4, 2010; and the Appeals Council denied review on
11 August 10, 2010. (Tr. 1-6.) Plaintiff gives no reason for his
12 failure to obtain and submit these routine reports during the
13 claimed period of disability. Rather, he avers that Dr.
14 Grosdidier's report was generated after the ALJ denied benefits but
15 before the Appeals Council sent notice that it declined review on
16 August 10, 2010. Plaintiff contends this created "a narrow good
17 cause window." (ECF No. 24 at 9.) He also asserts the significance
18 of the new evidence "would not have been clear until an attorney
19 reviewed all of the evidence together." *Id.* However, this reasoning
20 neither explains why medical records during the relevant period do
21 not document hand or fingering limitations, nor why Plaintiff did
22 not complain consistently of hand numbness prior to the denial of
23 benefits. As was the case in *Mayes*, Plaintiff fails to show
24 adequate good cause for his failure to obtain and present this
25 evidence during the administrative proceedings.

26 CONCLUSION

27 The ALJ's detailed credibility findings are "clear and
28

1 convincing." New evidence presented to the district court is not
2 material to the relevant period, and no good cause has been shown to
3 explain why the proffered evidence was not sought and presented
4 during the claimed period of disability prior to the ALJ's decision.
5 Accordingly,

6 **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment (**ECF No. 23**) is
8 **DENIED;**

9 2. Defendant's Motion for Summary Judgment (**ECF No. 25**) is
10 **GRANTED;**

11 The District Court Executive is directed to file this Order and
12 provide a copy to counsel for Plaintiff and Defendant. Judgment
13 shall be entered for Defendant, and the file shall be **CLOSED**.

14 DATED April 9, 2012.

15
16 S/ CYNTHIA IMBROGNO
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28